

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JAN 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Open Network Architecture Tariffs)
of Bell Operating Companies)
)
TO: The Commission)

CC Docket No. 92-91

OPPOSITION TO PETITION FOR RECONSIDERATION

Southwestern Bell Telephone Company (SWBT) hereby opposes the Petition for Reconsideration filed by MCI Telecommunications Corporation (MCI) on January 14, 1994. For the reasons stated herein, MCI's Petition must be rejected.

In its introduction, MCI admits that the arguments in its Application for Review (AFR) of the SCIS Disclosure Order¹ were rejected, as were the issues it raised in the ONA tariff investigation. Instead, MCI claims that:

the focus of this petition is not on the issues MCI did raise, but rather the issues it and the other intervenors were prevented from raising by the inadequate disclosure resulting from Redactions I and II, and the effect of such a handicap on the reasonableness and validity of the ONA Investigation Final Order.²

However, there is no real distinction between MCI's Petition and the arguments raised in MCI's AFR of the SCIS Disclosure Order. In both instances, MCI essentially claims that it had no meaningful opportunity to participate in the ONA tariff investigation. The Commission has considered, with public comment, MCI's claim, and

¹ Commission Requirements for Cost Support Material To Be Filed With Open Network Architecture Access Tariffs, 7 FCC Rcd. 1526 (Com. Car. Bur. 1992) (SCIS Disclosure Order), aff'd, FCC 93-531 (released Dec. 15, 1993) (SCIS Disclosure Reconsideration Order).

² MCI Petition at pps. 2-3.

rejected it.³ MCI's petition should be summarily dismissed, since it is nothing more than a petition for reconsideration of the SCIS Disclosure Reconsideration Order which is repetitious and thereby contrary to Sections 1.106(2) and (3) of the Commission's rules.

I. MCI HAD A MEANINGFUL OPPORTUNITY TO REVIEW SCIS FOR PURPOSES OF EVALUATING THE ONA TARIFFS.

MCI claims there was no "meaningful participation" by MCI in this investigation.⁴ While SWBT agrees that MCI had nothing meaningful to contribute to the ONA tariff investigation, it is not because MCI did not have the opportunity to do so.

The information given to MCI in Redactions I and II has already been held by this Commission to be sufficient for the purposes of MCI's participation in the tariff proceedings.⁵ The Commission's finding was based on its own analysis of the information provided to intervenors, as well as the report from Arthur Andersen and Company.⁶

MCI also claims that it was "unable to raise any issues based on the sensitivity analyses. . . ." ⁷ On the contrary, MCI had sufficient opportunity to raise such issues, and such issues were raised, but MCI alleges that these issues "were simply 'well-

³ SCIS Disclosure Reconsideration Order, at para. 14.

⁴ MCI at p. 3.

⁵ Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, Order (FCC 93-532) (released December 15, 1993) (ONA Investigation Final Order), at para. 80.

⁶ Id.

⁷ MCI at p. 5.

documented suspicions. . . ."⁸

MCI fails to explain the difference between "issues" and "well-documented suspicions." It cannot explain the difference because none exists. After MCI conducted its sensitivity analyses, it was able to list specific questions about the reasonableness of the rate and cost development process for the Commission to consider. Such questions would not have been possible if the SCIS disclosure process were flawed, and meaningful analysis was impossible, as MCI claims.⁹

MCI alleges that the Commission did not have the benefit of all of the intervenors' analyses of all of the different switch types.¹⁰ Nevertheless, the Commission obviously found it unnecessary to have the "benefit" of all of the intervenors' analyses on this point. The Commission had the ability to conduct its own analyses and the Arthur Andersen report to complete its investigation.¹¹

II. MCI HAS NO RIGHT TO VIEW SWBT PROPRIETARY INFORMATION WITHOUT APPROPRIATE SAFEGUARDS.

MCI claims that the ONA investigation violates the Communications Act, the APA, and constitutional due process requirements. MCI is unspecific and wrong. MCI has no right to

⁸ MCI at p. 5.

⁹ ONA Investigation Final Order at para. 80; see, Reply to Oppositions to Direct Case, filed by SWBT on November 13, 1992, at Exhibit 1.

¹⁰ MCI at p. 5.

¹¹ ONA Investigation Final Order at para. 78.

view the cost support information relied upon by SWBT, including SCIS. The information is required primarily to aid the Commission, and not to primarily "confer important procedural benefits upon individuals."¹² In this docket, the Commission properly balanced its discretion between the protection of confidential information and the limited interests of the commentators such as MCI, and that balance should be sustained.

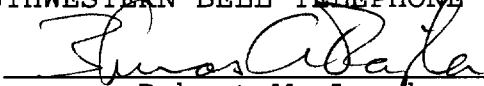
III. CONCLUSION

For the foregoing reasons, SWBT respectfully requests that the Commission dismiss MCI's Petition for Reconsideration.

Respectfully submitted,

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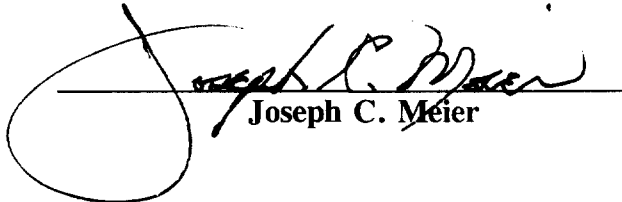
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¹² Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221, 1235 (D.C. Cir. 1988), quoting American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 538 (1970).

CERTIFICATE OF SERVICE

I, Joseph Meier, hereby certify that the foregoing
"Opposition To Petition For Reconsideration", in CC Docket
No. 92-91, has been served this 27th day of January, 1994, to the
Parties of Record.



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